

CHAPTER 10

VICTIM ASSISTANCE

A. DOMESTIC VIOLENCE

In 1988, the Idaho Legislature recognized domestic violence as a serious crime against individuals and society which can be deterred, prevented, or reduced by legal intervention, including arrest and prosecution of the offending individual. Domestic violence is defined as the physical injury, sexual abuse, or forced imprisonment or threat of such, to a family or household member, or of a minor or adult in a dating relationship. The 1988 enactment of the Domestic Violence Crime Prevention Act provides a legal means for a victim of domestic violence to seek a protection order to prevent further incidents of abuse. Idaho law also provides for the criminal prosecution of batterers and criminal penalties for those who violate protection orders.

Domestic violence is far more widespread than previously believed and legal and protective resources are now available to anyone in this situation. Most communities offer shelter and counseling services to the victims of spouse or partner abuse and the local police and prosecutors are aware of services for victims of domestic violence.

For more information about domestic violence and victim assistance issues, contact the Idaho Council on Domestic Violence, at (208) 334-6512, or 800-291-0463.

A protection order, civil in nature, deals with many aspects of domestic violence. It can order the offender to restrain from committing acts of domestic violence; exclude the offender from the dwelling which the parties share or from the residence of the victim; order the offender to participate in treatment or counseling service; restrain the offender from contacting, molesting, interfering with, or menacing the children whose custody is awarded to the individual applying for the protection order; or restrain the offender from entering any premises when it appears to the court that such restraint is necessary to prevent the abuser from contacting, molesting, interfering with or menacing the petitioner or the children involved. If abusers violate the protection order they can be arrested and subsequently prosecuted criminally. A protection order will last for a specified period, generally three months, and can be renewed for additional terms not to exceed 1 year each if necessary.

If an immediate need for a protection order exists, in that “irreparable injury” could result from domestic violence if an order is not immediately issued, a protective order may be obtained without notice to the offender and within 24 hours or less of filing the petition.

To obtain a protection order, contact the clerk of your county court. Most county prosecutor victim coordinators and domestic violence programs also have these forms, also.

Assistance and information is available at the shelters discussed in paragraph one below entitled “Shelters.” It is a crime to violate the terms of a protection order, carrying up to \$5,000 in fines and no more than a year in jail. Someone who violates a protection order can be arrested and jailed without a warrant.

1. SHELTERS

Many communities throughout the state have shelter homes and counseling services for victims of domestic violence, supported in part by funding from the Idaho legislature. Shelter homes are places where abused women and their children can go to get away from violence they are experiencing in their home. If you are a victim of domestic violence, you do not need to stay in the abusive situation. Contact a women’s center, church, or the police to find out the location of the nearest shelter or “safe home,” call the Idaho 24-hour crisis line, 1-800-669- 3176 or call the National Toll-Free Domestic Violence Hotline, 1-800-799-7233, a 24-hour service, for shelter referral, information or to discuss available options. You can get counseling, support and protection at the shelter home. If you wish to press charges against your spouse or partner, contact the police and do not let others discourage you from doing so. Violence in the home is no different from violence in the streets and ought not to be treated differently.

2. DOMESTIC VIOLENCE - THE OFFENSE

Although physical, mental and sexual abuse of a spouse does constitute battery, traditionally such violence in the home has not been viewed and treated as seriously as street violence. New laws have been passed which recognize the seriousness of family violence. In addition to the ability to charge a batterer with the criminal act of assault or battery, the domestic violence section of the Idaho Code provides for a separate crime recognizing the need to act upon domestic situations in a very serious manner. This applies to a “household member” - a person who is a spouse; former spouse; a person who has a child in common regardless of whether they have been married; or a person with whom a person is cohabiting, whether or not they have married or hold themselves out to be husband and wife.

In 1998, the Idaho Legislature enacted legislation which treats spousal abuse more harshly than typical battery by imposing stiffer penalties on the offender. Any household member who willfully inflicts traumatic injury upon any other household member is guilty

of a felony. A traumatic injury is defined as a “condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.” Felony domestic battery is punishable by a term of up to 10 years in prison and a fine of up to \$10,000.

Penalties for conviction of misdemeanor domestic assault or battery increase with subsequent convictions (misdemeanor domestic assault or battery is an offense which does not result in traumatic injury). A third conviction can be punished by up to 5 years in prison and a \$5,000 fine. Persons found guilty of domestic assault or battery are required to undergo an evaluation to determine whether counseling or treatment should be mandated.

Decisions to arrest lie within the discretion of the law enforcement officers. All who are arrested under domestic violence laws are issued “no contact orders” as a condition of bond and/or probation and there are designated penalties for violation of this “no contact order.”

The 1998 Legislature recognized the impact that violence can have on children, and doubled the penalties when domestic violence is witnessed by a child and doubled the penalty for battery on a pregnant woman. Courts also consider domestic violence as a factor when making child custody decisions in divorces.

In addition to state prosecution, federal law provides that anyone convicted of any offense for which one of the elements is the use of force or the threat of use of force against a family member may not ever own, possess, transfer or buy a firearm or ammunition.

B. SEX CRIMES

1. RAPE

Rape is an act of oral, anal or vaginal intercourse with a female done without her consent. Intercourse with a female under the age of 18, whether she is a voluntary participant or not, constitutes statutory rape.

As of July 1, 1989, if a wife resists sexual intercourse, but her husband overcomes her by force or violence, or if she is prevented from resisting by threats or is given an intoxicant, the husband is guilty of marital rape.

Another category of rape, known as male rape, was enacted by the 1989 legislature. Nonconsensual penal penetration, however slight, of the oral or anal opening of another male constitutes rape.

Rape is punishable by a minimum of one year imprisonment and maximum life sentence. Evidence of a rape victim’s previous sexual conduct is not admissible in court unless the judge determines after hearing that the victim’s prior conduct is relevant.

2. LEWD AND LASCIVIOUS CONDUCT WITH A MINOR

Sexual acts with children under the age of 16 are illegal and carry a punishment of up to life in prison. The perpetrator of lewd and lascivious conduct may be either male or female and the victim may be of either sex.

3. SEXUAL EXPLOITATION OF A CHILD

The solicitation of children for sex or for sexually-oriented photography or recording is illegal. A violation of this law is punishable by imprisonment up to 15 years, a fine up to \$25,000 or both.

Enticing a child under 16 away from home or school into a vehicle, building or enclosed area intended to conceal the child from public view is a criminal misdemeanor punishable by six months in the county jail, a fine up to \$1,000 or both. A second conviction constitutes a felony punishable by imprisonment up to five years.

The legislature also bans the use of a child in the commercial production of any material which involves the sexual exploitation of a child.

C. CRIMES AGAINST CHILDREN

1. INJURY TO CHILDREN

The inflicting of unjustifiable physical pain or mental suffering on a child or willfully allowing another person to do so is a crime. Pursuant to this law, you can be prosecuted if you allow a child to be physically or mentally abused by another, or put the child in a position to be physically or mentally harmed; e.g. DUI with a child in the car can be charged as injury to a child.

2. REPORTING OF CHILD ABUSE, ABANDONMENT OR NEGLECT

Idaho law requires the reporting of child abuse. Anyone having reason to believe that a child under the age of 18 has been abused, abandoned or neglected or who observes a child being subjected to conditions of neglect, is required by law to report such condition or

circumstance to the appropriate law enforcement agency or appropriate institution. Failure to report is a misdemeanor punishable by up to six months in jail, a \$300 fine or both. Anyone who in good faith reports child abuse is immune from liability.

D. VICTIM ASSISTANCE

Pursuant to a 1985 law, victims of felony crimes have the right to participate in the criminal justice process. This participation includes the following rights: (1) to be treated with fairness, dignity and respect throughout the criminal process; (2) to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings; (3) entitled to a timely disposition of the case; (4) the opportunity to communicate with the prosecution in criminal or juvenile offenses, and to be advised of any proposed plea agreement prior to entry of the agreement; (5) given prior notification of all hearings involving the accused; (6) the expeditious return of any stolen or other personal items confiscated by law enforcement agencies when no longer needed as evidence; (7) consultation with the investigator who prepares a report for the judge who will sentence the offender, including the opportunity to make a statement explaining the impact the offender's conduct has had on the victim; (8) the opportunity to testify under oath at the offender's guilty plea or sentencing hearing; (9) notification of any parole or commutation hearing and the opportunity to present evidence to the Commission for Pardons and Parole; and (10) notification if the offender escapes or is released from custody. The citizens of Idaho gave victims' rights a constitutional dimension when they overwhelmingly voted for the Idaho Victims' Rights Amendment in 1994.

The goal of a Victim Assistance Program is to improve the treatment of victims of crime by providing each victim with the assistance and services necessary to speed her/his recovery from the criminal act and to support and aid the victim as she/he moves through the criminal justice process. The focus of the program is comprehensive service delivery including notification of court dates and procedures, crisis intervention, trial/courtroom orientation, accompaniment, assistance with crime victims' compensation and restitution claims, and resource and referral information. The objective of the program is to help the victim assert their right to participate at all critical stages of the criminal justice process and to insure consideration of the impact of the crime upon the victim in all major criminal justice decisions and to ensure that victims are not forgotten in the criminal justice system.

E. CRIME VICTIM'S COMPENSATION

In 1986 the Idaho Legislature passed the Crime Victim's Compensation Act to assist victims who are physically and/or emotionally injured as the result of a crime committed against them. The act pays certain benefits, subject to statutory limits, to 1) direct victims for crime-related medical and mental health treatment costs and/or wage loss, 2) survivors of those killed as a result of crime for costs relating to funeral and burial of the deceased victim, and 3) immediate family members of homicide or sexual assault victims for crime-related mental health treatment costs. For more information contact the program at 1-800-950-2110 or 208-334-6080.

F. STALKING

Any person who willfully, maliciously and repeatedly follows or harasses another person or a member of that person's family is guilty of the crime of stalking and is punishable by imprisonment of up to one year or by a fine of not more than \$1,000 or both. A second or subsequent conviction occurring within seven years of a prior stalking conviction is a felony.

G. SEXUAL EXPLOITATION BY A MEDICAL CARE PROVIDER

Any person who represents him or herself as a physician, surgeon, dentist, psychotherapist, chiropractor, nurse or other medical care provider, who has sexual contact with a patient or client, is guilty of sexual exploitation by a medical care provider. Consent is not a defense to this crime. The crime is punishable by a fine of up to \$1,000 or a jail term of up to one year, or both. An action against the medical care provider must be initiated within two years after its commission.

H. DESTRUCTION OF JOINT PROPERTY

As of July 1, 1998, it is illegal to maliciously injure or destroy any jointly owned property without the permission of the joint owner, or any property belonging to the community of the person's marriage.